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## **Resilience and student wellbeing in Higher Education: A theoretical basis for establishing law school responsibilities for helping our students to thrive.**

Nigel Duncan, Caroline Strevens, and Rachael Field\*

### **Abstract**

There is widespread concern for the mental wellbeing of our students. We argue that, while resisting the neoliberal tendencies that contribute to this, we have a responsibility for helping our students to thrive. Rooted in a theory of positive psychology: self determination theory, we present methods which may help us in this endeavour. These include our approaches to marketing and recruitment, curriculum design, assessment and feedback, experiential learning and developing a safe learning environment. We suggest how addressing these areas of our practice may assist students to develop their competence, and to experience autonomy and relatedness during their programmes of learning. In so doing we provide sources which underpin our arguments and which, we hope, will encourage a debate across European law faculties on this important topic.

**Keywords:** student wellbeing; self determination theory; neoliberalism; curriculum design; learning methods.

### **Student Wellbeing**

Across most jurisdictions there is an increasing concern for the mental health of students in universities.<sup>1</sup> Research in the UK shows that ‘the number of

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<sup>1</sup> Rainer M Holm-Hadulla (ed), Special Issue: Mental Health of Students – National and International Perspectives (2015) 3(1-2) *Mental Health and Prevention*; Ann Macaskill, ‘The Mental Health of University Students in the United Kingdom’ (2012) 41(4) *British Journal of Guidance & Counselling* 426; Seeta Bhardwa, ‘UK’s Biggest Student Mental Health Study Launched’ (Times Higher Education, 31 July 2017) <<https://www.timeshighereducation.com/student/news/uks-biggest-student-mental-health->

students who disclose a mental health condition to their university has increased dramatically in the past 10 years' and 'between 2007 and 2015, the number of student suicides increased by 79 per cent (from 75 to 134)'.<sup>2</sup>

The issue is receiving attention in continental Europe.<sup>3</sup> Responses to this issue vary. Within Europe, for example, it seems that psychological counselling services are more likely to be available in northern countries, with services in southern countries focussing on specific health issues such as stopping smoking.<sup>4</sup> Whilst this appears to be a growing problem across higher education generally there is research that suggests that it might be worse for law students.<sup>5</sup>

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study-launched> accessed 29 August 2019; Paul Basken, 'US Campuses Report Surge in Student Mental Health Woes' (Times Higher Education, 12 August 2019) <<https://www.timeshighereducation.com/news/us-campuses-report-surge-student-mental-health-woes>> accessed 29 August 2019; John Ross, 'Australia Plans New Guidelines to Address Student Mental Health' (Times Higher Education, 5 September 2018) <<https://www.timeshighereducation.com/news/australia-plans-new-guidelines-address-student-mental-health>> accessed 29 August 2019. See also, for example, the Student Mental Health Research Network <<https://www.smartten.org.uk/>> accessed 16 March 2020; and the work and resources of the UK's student mental health charity - *Student Minds* - which is available at <<https://www.studentminds.org.uk/>> accessed 16 March 2020. See also for example, Paul Gorczynski et al, 'Examining Mental Health Literacy, Help Seeking Behaviours, and Mental Health Outcomes in UK University Students' (2017) 12(2) *The Journal of Mental Health Training, Education and Practice* 111; Craig Thorley, 'Not by Degrees: Improving Student Mental Health in the UK's Universities', IPPR.

<[www.ippr.org/publications/not-by-degrees](http://www.ippr.org/publications/not-by-degrees)> accessed 16 March; Emma Broglia, Abigail Millings and Michael Barkham, 'Challenges to Addressing Student Mental Health in Embedded Counselling Services: A Survey of UK Higher and Further Education Institutions' (2018) 46(4) *British Journal of Guidance & Counselling* 441; Yasuhiro Kotera, Elaine Conway and William Van Gordon, 'Mental Health of UK University Business Students: Relationship with Shame, Motivation and Self-Compassion' (2019) 94(1) *Journal of Education for Business* 11.

<sup>2</sup> Craig Thorley, 'Not By Degrees: Improving Student Mental Health in the UK's Universities' (Institute for Public Policy Research) <<https://www.ippr.org/files/2017-09/not-by-degrees-summary-sept-2017-1-.pdf>> accessed 29 August 2019.

<sup>3</sup> David De Coninck, Koen Matthijs and Patrick Luyten 'Subjective Well-Being Among First-Year University Students: A Two-Wave Prospective Study in Flanders, Belgium' (2019) 10(1) *Student Success* 33.

<sup>4</sup> Hans-Werner Rückert, 'Students' Mental Health and Psychological Counselling in Europe' (2015) 3(1-2) *Mental Health and Prevention* 34, 36.

<sup>5</sup> See for example, Kennon M Sheldon and Lawrence S Krieger, 'Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being' (2004) 22(2) *Behavioral Sciences and the Law* 261; Kennon M Sheldon and Lawrence S Krieger, 'Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory' (2007) 33(6) *Personality and Social Psychology Bulletin* 883; Lawrence S Krieger, 'The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation' (2011) 8 *University of St. Thomas Law Journal* 168; Lawrence S

Evidence of this comes from the US,<sup>6</sup> Australia<sup>7</sup> and the UK.<sup>8</sup> The extent to which this is true has been contested,<sup>9</sup> and this is an important area for further research, since, if it is true, there will be law-specific concerns and thus approaches to remediation that may be particularly important for law schools to address. For example, Bleasdale and Humphreys found, in a study of students across six disciplines<sup>10</sup> at a prestigious university in the UK, that law students were more likely to see success in terms of achieving the highest possible grades, ideally the highest in the class. By contrast students in other disciplines were more concerned with consistency of performance and being

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Krieger and Kennon M Sheldon, 'What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers' (2015) 83 *Geo Wash L Rev* 554. See also, Judy Allen and Paula Baron, 'Buttercup Goes to Law School: Student Well-being in Stressed Law Schools' (2004) 29(6) *Alternative Law Journal* 285; Colin James, 'Seeing Things as We Are: Emotional Intelligence and Clinical Legal Education' (2005) 8 *Clinical Legal Education* 123; Martin Seligman, Paul Verkuil and Terry Kang, 'Why Lawyers are Unhappy' (2005) 10(1) *Deakin Law Review* 49; Massimiliano Tani and Prue Vines, 'Law Students' Attitudes to Education: Pointers to Depression in the Legal Academy and the Profession?' (2007) 19(1) *Legal Education Review* 3; Kath Hall, 'Do We Really Want to Know? Recognising the Importance of Student Psychological Well-being in Australian Law Schools' (2009) 9 *QUT Journal of Law and Justice* 1; Catherine Leahy et al, 'Distress Levels and Self-Reported Treatment Rates for Medicine, Law, Psychology and Mechanical Engineering Students: Cross-Sectional Study' (2010) 44(7) *Australian and New Zealand Journal of Psychiatry* 608; Kath Hall, Molly Townes O'Brien and Stephen Tang, 'Developing a Professional Identity in Law Schools: A View from Australia' (2010) 4 *Phoenix Law Review* 19; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'No Time to Lose: Negative Impact on Law Student Well-Being May Begin in Year One' (2011) 2(2) *International Journal of the First Year in Higher Education* 49; Molly Townes O'Brien, Stephen Tang and Kath Hall, 'Changing our Thinking: Empirical Research on Law Student Well-Being, Thinking Styles and the Law Curriculum' (2011) 21(2) *Legal Education Review* 149; Natalia Antolak-Saper, Lloyd England and Anthony Lester, 'Health and Well-Being in the First Year: The Law School Experience' (2011) 36(1) *Alternative Law Journal* 47.

<sup>6</sup> Sheldon and Krieger 'Does Legal Education Have Undermining Effects on Law Students?' (n 5) 261; Sheldon and Krieger 'Understanding the Negative Effects of Legal Education' (n 5) 883.

<sup>7</sup> Norm Kelk, et al, *Courting the Blues: Attitudes Towards Depression in Australian Law Students and Lawyers* (Brain & Mind Research Institute, 2009) 42; Catherine Leahy et al (n 5); Townes O'Brien, Tang and Hall, 'Changing our thinking' (n 5).

<sup>8</sup> See for example, Emma Jones, 'Connectivity, Socialisation and Identity Formation: Exploring Mental Wellbeing in Online Distance Learning Law Students' in Caroline Stevens and Rachael Field (eds), *Educating for Well-Being in Law: Positive Professional Identities and Practice* (Routledge, 2019) 103-116.

<sup>9</sup> Christine Parker, 'The "Moral Panic" over Psychological Wellbeing in the Legal Profession: A Personal or Political Ethical Response' (2014) 37 *University of New South Wales Law Journal* 1103.

<sup>10</sup> The other disciplines are biological sciences, geography, mechanical engineering, medicine and music.

thought well of in ways not solely concerned with grades.<sup>11</sup> In spite of this, there is evidence from the UK that undergraduate students across all disciplines have a lower self-perception of well-being than the general population of the same age.<sup>12</sup>

These findings are now well-established, although it would be useful for related work to be undertaken in the UK and Europe.<sup>13</sup> It is clear that, as legal educators, there is a level of responsibility for the mental wellbeing of our students. This is so regardless of the ethical framework we adopt to inform our approach to our work.<sup>14</sup> We have the task of assisting students to undertake major life transitions; for example, from the relatively protected environment of school and home to the independent learning (and often independent living) associated with higher education. A lot has been written and researched about this,<sup>15</sup> but it is worth observing that the years of the undergraduate degree constitute a continuing process of many transitions, as does graduation and the movement into employment, postgraduate education or work experience. This is unique for every student, depending on their economic, social and ethnic background, whether they are studying away from home, in their own first language or as recent school leavers or after a period of work or other life experience.

Transitions in, through and out of law school should be positive and life-affirming processes; providing opportunities to make new friends, to open the mind to new information, perspectives and critiques, and to develop

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<sup>11</sup> Lydia Bleasdale and Sarah Humphreys, 'Identity, Well-Being and Law Students' in Strevens and Field (n 8) 172-188, 181. The full report is at <[http://teachingexcellence.leeds.ac.uk/wp-content/uploads/2018/01/LITEbleasdalehumphreys\\_fullreport\\_online.pdf](http://teachingexcellence.leeds.ac.uk/wp-content/uploads/2018/01/LITEbleasdalehumphreys_fullreport_online.pdf)> accessed 29 August 2019.

<sup>12</sup> Jonathan Neves and Nick Hillman, *The 2016 Student Academic Experience Survey* (York: Higher 2016, Education Academy) <[https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/hea/private/student\\_academic\\_experience\\_survey\\_2016\\_heapi\\_final\\_version\\_07\\_june\\_16\\_ws\\_1568037352.pdf](https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/hea/private/student_academic_experience_survey_2016_heapi_final_version_07_june_16_ws_1568037352.pdf)> accessed 16 February 2020.

<sup>13</sup> *Student Minds* (n 1).

<sup>14</sup> See for example, Nigel Duncan, Rachael Field and Caroline Strevens, 'An Ethical Conceptual Framework for the Promotion of Law Student and Lawyer Well-Being.' Paper given at 8<sup>th</sup> International Legal Ethics Conference, Melbourne, 2018, <<http://teachinglegalethics.org/index.php/content/ethical-conceptual-framework-promotion-law-student-and-lawyer-well-being>> accessed 30 August 2019.

<sup>15</sup> See, for example, Ann RJ Briggs, Jill Clark and Ian Hall, 'Building Bridges: Understanding Student Transition to University' (2012) 18(1) *Quality in Higher Education* 3.

intellectually and to build curiosity about the world. However, the evidence of increasing mental health problems for university students, and for law students in particular, suggests that too often such transitions prove to be miserable experiences and ones which are ultimately damaging.

### Neoliberalism, Accommodationism and Individualisation

Before developing our proposals we should point out a major risk in the discourse that has arisen around student mental health and its corollary, student wellbeing and resilience. That risk is the tendency to individualise responsibility for wellbeing and thus for the causes of mental ill-health. This has been described by Carrette and King as an ‘accommodationist orientation’<sup>16</sup> which takes as given the environment and circumstances that individuals encounter and expects each person to find ways of accommodating them. An uncritical acceptance of unsupportive or negative circumstances is extremely damaging as it inhibits critique.

As legal educators we need to address the cultures of the practising profession as many of our students aspire to join that profession. ‘[T]here appears broad agreement ... that powerful connections exist between the shifting cultures and practices of the legal academy and the development of the legal discipline; and that changes in these relations ... have consequences not just for legal academics and law students but also for the legal profession’.<sup>17</sup> For example, there is much that can be criticised about the way in which legal professionals are expected to work: a long hours culture, business practices which may undermine the rule of law and, in many workplaces, a failure to address harassment and bullying.<sup>18</sup> As Collier explains: ‘economic pressures associated with neoliberalism are producing a reserve army of legal labour, casting the

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<sup>16</sup> Jeremy Carrette and Richard King, *Selling Spirituality: The Silent Takeover of Religion* (Routledge 2004) quoted in Ron Purser and David Loy, ‘Beyond McMindfulness’ (7 January 2013) <[https://www.huffpost.com/entry/beyond-mcmindfulness\\_b\\_3519289?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce\\_referrer\\_sig=AQAAAJSoTJbMqntOwIXb3QA6\\_6n3G1Pm4u-XBXOdTAQwuVWOvuulGgvCs7eJdyET1h4bn8JsgmJUlv17ZqHkay6sxFfsqCIAF92QX6w0NPn\\_iaODxrvFvg8AGCKlhqXKb7r9I7JEvRrdQ0TyU7EHY1KD\\_pcJr3mt\\_I6G8ahm v1X-7\\_N](https://www.huffpost.com/entry/beyond-mcmindfulness_b_3519289?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAJSoTJbMqntOwIXb3QA6_6n3G1Pm4u-XBXOdTAQwuVWOvuulGgvCs7eJdyET1h4bn8JsgmJUlv17ZqHkay6sxFfsqCIAF92QX6w0NPn_iaODxrvFvg8AGCKlhqXKb7r9I7JEvRrdQ0TyU7EHY1KD_pcJr3mt_I6G8ahm v1X-7_N)> accessed 29 August 2019.

<sup>17</sup> Richard Collier, ‘“Love Law, Love Life”: Neoliberalism, Wellbeing and Gender in the Legal Profession – the Case of Law School’ (2014) 17(2) *Legal Ethics* 202.

<sup>18</sup> Kieran Pender, *Us Too? Bullying and Sexual Harassment in the Legal Profession*, (International Bar Association, 2019) <<https://www.ibanet.org/bullying-and-sexual-harassment.aspx>> accessed 29 August 2019.

individual as author of her/his own success or failure.<sup>19</sup> Contemporary legal work culture, resulting from the increasing influence of neoliberal ideology, must be challenged. As Christine Parker puts it: 'It is part of the neoliberal condition to interpret dissatisfaction with our lives in terms of individual troubles to be addressed by medication and personal coping and wellbeing strategies rather than collective political and social action.'<sup>20</sup> Neoliberalism does not only affect the work of legal practitioners, it impacts the work of universities,<sup>21</sup> including law schools,<sup>22</sup> and as a consequence the experience of students. Margaret Thornton condemns the 'neoliberal turn', which she describes as a sharp move to the right in politics, which 'insidiously transformed higher education from a public to a private good',<sup>23</sup> departing from the egalitarian values of social liberalism.<sup>24</sup> We have all experienced this shift towards a commodification of higher education and a marketisation of universities.<sup>25</sup> This produces poorer staff:student ratios, increased student perceptions of themselves as consumers and increased competition for student numbers. All these factors may inhibit our ability to address student mental health and wellbeing.

It is challenging to identify a major source of student mental ill-health to be neoliberalism.<sup>26</sup> It is a foe that appears to be far beyond the reach of us as

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<sup>19</sup> Richard Collier (n 17) 229-30.

<sup>20</sup> Parker (n 9) 1129.

<sup>21</sup> John Smyth, *The Toxic University: Zombie Leadership, Academic Rock Stars and Neoliberal Ideology* (Palgrave Macmillan 2017).

<sup>22</sup> Richard Collier (n 17) 213-214.

<sup>23</sup> Margaret Thornton, 'Law Student Wellbeing: A Neoliberal Conundrum' (2016) 58(2) *Australian Universities Review* 42.

<sup>24</sup> Colin James, 'The Ethics of Wellbeing: Psychological health as the vanguard for sociological change' in Strevens & Field (n 8) 1-13, 2.

<sup>25</sup> See, for example, within a wide literature, Roger Brown and Helen Carasso, *Everything for Sale? The Marketisation of UK Higher Education* (Routledge, 2013).

<sup>26</sup> See, for example, Daniel Saunders, 'The Impact of Neoliberalism on College Students' (2007) 8(5) *Journal of College and Character* 1; Collier (n 17); Margaret Thornton, 'Neoliberal Melancholia: The Case of Feminist Legal Scholarship' (2004) 20(1) *Australian Feminist Law Journal* 7; Margaret Thornton, 'Among the Ruins: Law in the Neo-Liberal Academy' (2001) 20 *Windsor Year Book of Access to Justice* 3; Margaret Thornton, 'The Law School, the Market and the New Knowledge Economy' (2007) 17 *Legal Education Review* 1; Margaret Thornton, *Privatising the Public University: The Case of Law* (Routledge 2011). See also, Colin James, Caroline Strevens, Rachael Field and Claire Wilson, 'Fit Your Own Oxygen Mask First: The Contemporary Neoliberal University and the Wellbeing of Legal Academics' in Judith Marychurch and Adiva Sifris (eds), *Wellness for Law as Core Business* (LexisNexis 2019) and Colin James, Caroline Strevens, Rachael Field and Claire Wilson, 'The Changing World of Legal Education and Law Teachers' Quality of Working Life in Australia and the UK: What Do Law Schools

individuals or as a collective group of legal academics.<sup>27</sup> It is unrealistic to think that we are in a position to prevent this trend. However, we should continue to challenge developments that our research suggests are damaging. Our task as academics is to speak truth to power. We undermine our position ethically if we fail to do so. We do, however, need to recognise that to challenge neoliberalism we need to work collectively, and to do so locally, nationally and internationally, and that there is a political element to this responsibility. We should maintain a reasonable degree of hope. As Colin James has said, ‘Since change is the only constant, neoliberalism will pass like other historical phases.’<sup>28</sup> The cracks may already be visible, as suggested by Martin Wolf.<sup>29</sup> There is a part for us to play.

### Addressing Student Wellbeing in our Law Schools

Having explored the question of student wellbeing it is appropriate to turn to potential impediments to that wellbeing. Students’ circumstances are diverse. They may provide a source of strength that helps students to rise to the challenges of higher education, but they may also be a source of challenges that may impede learning. It means that their experience of the education we provide them differs. We have little influence over their external circumstances, but we can influence what it is they experience when they are at university. This may be best understood in terms of stress, with its potential to have positive or negative consequences. There are many sources of stress that are inherent in the transitions that students go through when entering

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Need to Change?’ in Janet Chan, Michael Legg and Prue Vines, *The Impact of Technology and Innovation on the Well-Being of the Legal Profession* (Intersentia 2020).

<sup>27</sup> See for example, Henry A Giroux, *Impure Acts* (Taylor and Francis 2000); Henry A Giroux, *Against the Terror of Neoliberalism: Politics Beyond the Age of Greed* (Routledge 2015); Henry A Giroux, *Terror of Neoliberalism: Authoritarianism and the Eclipse of Democracy* (Routledge 2018); Alfredo Saad-Filho, ‘Crisis in Neoliberalism or Crisis of Neoliberalism?’ in Alfredo Saad-Filho (ed), *Value and Crisis: Essays on Labour, Money and Contemporary Capitalism* (Brill 2019) 302; Simon Springer, Kean Birch and Julie MacLeavy (eds), *Handbook of Neoliberalism* (Routledge 2016); William Davies, *The Limits of Neoliberalism: Authority, Sovereignty and the Logic of Competition* (Sage 2016); Stuart Hall, Doreen Massey and Michael Rustin, *After Neoliberalism?: The Kilburn Manifesto* (Lawrence & Wishart 2015); David Harvey, *A Brief History of Neoliberalism* (Oxford University Press 2007); Alfredo Saad-Filho and Deborah Johnston, *Neoliberalism: A Critical Reader* (University of Chicago Press 2005); Noam Chomsky, *Profit Over People: Neoliberalism and Global Order* (Seven Stories Press 1999).

<sup>28</sup> James (n 24) 12.

<sup>29</sup> Martin Wolf, ‘Why rigged capitalism is damaging liberal democracy’ *Financial Times*, 18 September 2019.



university, learning within it and graduating from it.<sup>30</sup> Stress is not necessarily an evil, being often the spur to learning and development. Moderate amounts of stress promote the production of adrenalin, which enables us to perform mentally and physically more effectively.<sup>31</sup> However, when stress becomes excessive a cortisol reaction is promoted, which tends to produce a ‘fight or flight’ reaction, and inhibits a desirable rational response.<sup>32</sup> As legal academics, we should be creating student experiences that are constructive, designing in developmental demands that encourage growth while minimising unnecessary stress which may inhibit learning.

There are inherent stressors in studying law, such as encountering a new discipline in an unfamiliar environment, facing a summative assessment or, for clinic students, meeting a distressed client.<sup>33</sup> When we identify such inherent stressors we share with our students the responsibility for responding

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<sup>30</sup> See for example, the work of Barbara A Glesner Fines on this point: ‘Law School and Stress (Why It’s So Hard and What to Do About It)’ (1999 University of Missouri — Kansas City School of Law); ‘Competition and the Curve’ (1996) 65 *University of Missouri Kansas City Law Review* 879; ‘Fear and Loathing in the Law School’ (1991) 23 *Connecticut Law Review* 627. See also, Barbara A Glesner Fines, ‘The Impact of Expectations on Teaching and Learning’ (2002) 38 *Gonzaga Law Review* 89; Barbara A Glesner Fines, ‘Fundamental Principles and Challenges of Humanizing Legal Education’ (2007) 47 *Washburn Law Journal* 313; Barbara A Glesner Fines, ‘Three Views of the Academy: Legal Education and the Legal Profession in Transition’ (2015) 51 *Tulsa Law Review* 487; Barbara A Glesner Fines, ‘Picturing Professionals: The Emergence of a Lawyer’s Identity’ (2018) 14 *University of St Thomas Law Journal* 437.

<sup>31</sup> See for example, Owen Kelly, *Coping with Stress and Avoiding Burnout: Techniques for Lawyers*, CBA PracticeLink <http://www.cba.org/cba/practicelink/bwl/stresscoping.aspx> accessed 13 December 2019; American Bar Association, *What is Stress* <[https://www.americanbar.org/groups/lawyer\\_assistance/resources/stress/](https://www.americanbar.org/groups/lawyer_assistance/resources/stress/)> accessed 20 April 2020. See also for example, Lorelle Burton, Drew Westen and Robin Kowalskic, *Psychology* (5<sup>th</sup> ed, John Wiley & Sons 2018) ch 14; Hans Selye, ‘History of the Stress Concept’ in Leo Goldberger and Shlomo Breznitz (eds), *Handbook of Stress: Theoretical and Clinical Aspects* (2<sup>nd</sup> ed, Free Press 1993); and George Fink, *Stress Science: Neuroendocrinology* (Academic Press 2010).

<sup>32</sup> Nigel Duncan, ‘Addressing Emotions in Preparing Ethical Lawyers’ in Paul Maharg and Caroline Maughan (eds), *Affect and Legal Education: Emotion in Learning and Teaching the Law* (Ashgate 2011) 257-282, 274-277; Alan Lerner, ‘Using our Brains: What Cognitive Science and Social Psychology Teach us about Teaching Law Students to Make Ethical, Professionally Responsible Choices’ (2004) 23 *Quinnipiac Law Review* 643.

<sup>33</sup> Gregory Baker, ‘Do You Hear the Knocking at the Door - A Therapeutic Approach to Enriching Clinical Legal Education Comes Calling’ (2006) 28 *Whittier Law Review* 379; Adrian Evans et al, *Australian Clinical Legal Education: Designing and Operating a Best Practice Clinical Program in an Australian Law School* (ANU Press 2017); Nigel Duncan, ‘Resilience, Positive Motivation and Professional Identity: The Experience of Law Clinic Students Working with Real Clients’ in Caroline Strevens and Rachael Field, *Educating for Well-Being in Law: Positive Professional Identities and Practice* (Routledge 2019)

effectively to them and doing what we can to support our students in developing their own responses. At the same time, we need to identify all sources of stress with care, as many arise within the university environment and thus lie within our control. We have a duty to design the law school learning environment bearing in mind its potential to do harm, in order to minimise the risk of stress becoming excessive. This duty applies as much to senior managers as to academics. A balanced perspective on these issues recognises that there are sources of student stress that we can address and where we identify those, we should do what we can to address them, by local, national and international initiatives as appropriate.<sup>34</sup>

Empirical research conducted in America gives some indication of how legal education may have an adverse effect on the psychological wellbeing of law students. As Sheldon and Krieger assert:

Many researchers and commentators have proposed that legal education may be the common source of some of the problems among both students and lawyers. Potential negative aspects of legal education include excessive workloads, stress, and competition for academic superiority; institutional emphasis on comparative grading, status-seeking placement practices, and other hierarchical markers of worth; lack of clear and timely feedback; excessive faculty emphasis on analysis and linear thinking, causing loss of connection with feelings, personal morals, values, and sense of self; teaching practices that are isolating or intimidating, and content that is excessively abstract or unrelated to the actual practice of law;

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<sup>34</sup> For an overview, see David Robotham and Claire Julian, 'Stress and the Higher Education Student: A Critical Review of the Literature' (2006) 30(2) *Journal of Further and Higher Education* 107. See also, for example, Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-Being Through a First Year Law Subject' (2012) 12 *QUT Law and Justice Journal* 133; Rachael Field, 'Harnessing the Law Curriculum to Promote Law Student Well-Being, Particularly in the First Year of Legal Education' in Rachael Field, James Duffy and Colin James (eds), *Promoting Law Student and Lawyer Well-Being in Australia and Beyond* (Routledge 2016).

and conceptions of law that suppress moral reasoning and creativity (references removed).<sup>35</sup>

Whilst these studies concern the American educational system, the list provides a starting point to examine European practice. We have argued above that we have an ethical duty to examine our practice and design curricula and learning environments bearing in mind their potential to do harm. In this article, we use theories of positive psychology to provide a basis for understanding and addressing the problem, and we make a number of proposals which may provide practical (if partial) solutions.

### **Self-Determination Theory (SDT)**

SDT is a complex theory developed by positive psychologists that seeks to explain the implications for wellbeing of holding intrinsic as opposed to extrinsic goals, values and motivations.

SDT underpins a growing body of research by legal academics across the world who are seeking to understand wellbeing and mental health in both law students and legal academics.<sup>36</sup> It has been chosen for our analysis because SDT has been validated by many empirical studies and applied across numerous fields of study. ‘Self-determination theory is one of the most widely cited theories of human motivation’.<sup>37</sup>

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<sup>35</sup> Kennon M Sheldon and Lawrence S Krieger, “Does Legal Education Have Undermining Effects on Law Students? Evaluating Changes in Motivation, Values, and Well-Being” (2004) 22(2) *Behavioral Sciences & the Law* 261, 262

<sup>36</sup> See footnotes 5, 6, 34 and 35 for examples of outputs based upon SDT. Also see Caroline Strevens, Rachael Field and Nigel Duncan, ‘Self-care as Professional Virtue for Lawyers’ in Caroline Strevens and Rachael Field (eds), *Educating for Well-being in Law: Positive Professional Identities and Practice* (Routledge 2019) 14 – 26; Rachael Field and Jan H F Meyer, ‘Threshold Concepts in Law: A Key Future Direction for Intentional Curriculum Reform to Support Law Student Learning Success and Well-Being’ in Emma Jones and Fiona Cownie, *Key Directions in Legal Education: National and International Perspectives* (Routledge, 2020) Ch 10; Caroline Strevens, ‘The Wrong Message: Law Student Well-Being in the Contemporary Higher Education Environment’ in Emma Jones and Fiona Cownie, *Key Directions in Legal Education: National and International Perspectives* (Routledge 2020) Ch 9.

<sup>37</sup> For recent meta-analysis of this psychological theory see Christopher P Cerasoli, Jessica M Nicklin and Alexander S Nassreelrgawi, ‘Performance, Incentives, and Needs for Autonomy, Competence, and Relatedness: A Meta-Analysis’ (2016) 40(6) *Motivation and Emotion* 781; and Shi Yu, Chantal Levesque-Bristol, and Yukiko Maeda, ‘General Need for Autonomy and Subjective Well-Being: A Meta-Analysis of Studies in the US and East

This theory was also selected by Krieger and Sheldon in the late 1990s when they began to examine poor wellbeing in law students. The basis on which they selected the theory was that it could explain why a change in law student wellbeing was taking place and it provided credible empirical methods to test the change. SDT sets out to explain the importance, and link to levels, of wellbeing in relation to goal-setting, whether goals are intrinsic or extrinsic in nature and the motivations behind selecting a particular goal.<sup>38</sup> Sheldon and Krieger conducted empirical research and concluded that legal education could have a damaging effect upon the wellbeing of students by negatively influencing goals and motivation. They identified practice in law schools that encouraged extrinsic goals such as securing a summer internship in a highly regarded law firm. They also found practice that encouraged extrinsic motivation towards 'superficial rewards and image-based values'.<sup>39</sup> As a result, the student sense of being able to pursue their own personal values was evidenced as reducing which was consequently reflected in a reduction in their levels of wellbeing.

Self Determination Theory (SDT) is based upon the premise, formulated by Deci and Ryan in 1985,<sup>40</sup> that there is a link between high levels of wellbeing and being intrinsically motivated, wherein the reason for acting is for the enjoyment and sense of fulfilment it provides and is thus an end in itself. So, for example, a person chooses to study employment law, not in order to gain promotion, but due to a curiosity as to how the law balances the interests of employers and employees. This is contrasted with external motivation where the reason why a person has chosen to study employment law is because a line manager has told them to do so. As far as the law students studied by Krieger and Sheldon were concerned, where the law school encouraged them to study law in order to earn large salaries upon graduation and work for important and highly regarded firms, then the students were at risk of losing touch with their personal values and original reasons for studying law based upon intrinsic values such as helping others or natural curiosity.

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Asia' (2018) 19(6) *Journal of Happiness Studies* 1863 See also Richard M Ryan and Edward L Deci, 'Brick by Brick: The Origins, Development, and Future of Self-Determination Theory' (2019) 6 *Advances in Motivation Science* 111.

<sup>38</sup> Edward L Deci, and Richard M Ryan, 'The "What" and "Why" of Goal Pursuits: Human Needs and the Self-Determination of Behavior' (2000) 11(4) *Psychological Inquiry* 227.

<sup>39</sup> *Ibid* 264.

<sup>40</sup> Edward L Deci and Richard M Ryan, *Intrinsic Motivation and Self-Determination in Human Behavior* (Springer Science & Business Media 1985).

Basic Psychological Needs Theory provides a unifying principle within SDT, and arguing that psychological well-being and optimal functioning is predicated on a person experiencing autonomy, competence, and relatedness. Many empirical studies have established that those with autonomous motivation experience higher levels of positive affect, better productivity and less burn out at work, greater understanding and higher subjective wellbeing.<sup>41</sup> The theory argues that all three needs are essential and that if any is thwarted there will be negative consequences such as “inner conflict, alienation, anxiety and depression”.<sup>42</sup> Autonomy can be described as experiencing the ability and opportunity to exercise choice. Competence can be described as being able to experience increasing mastery and relatedness can be described as experiencing trusting and trusted relationships with others. Wellbeing is linked to experiencing all three. Therefore, social contexts that support versus thwart these three needs should invariantly impact wellness.

SDT is not without its critics. Some have argued about the extent to which autonomy is a universal psychological need citing cultural differences of Eastern cultures.<sup>43</sup> According to Chao and Tseng<sup>44</sup> these cultures tend to emphasize values such as conformity, social harmony, and family interdependence over values such as individuality, uniqueness, and independence. The response to this is that autonomy should not be equated with individuality. According to Jang et al citing Chirkov, Ryan and Lynch,<sup>45</sup> individuals could be autonomously interdependent and act autonomously in accord with the communal good, and at the same time to embrace autonomously endorsed collectivistic values.

To experience autonomy people need to live a life true to their values, to feel that they are self-governed and act in a way which is congruent with their true

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<sup>41</sup> Edward L Deci and Richard M Ryan, ‘Facilitating Optimal Motivation and Psychological Well-Being Across Life’s Domains’ (2008) 49(1) *Canadian Psychology* 14.

<sup>42</sup> Deci, E.L. and Ryan, R.M., 2000. ‘The “what” and “why” of goal pursuits: Human needs and the self-determination of behavior’. *Psychological inquiry*, 11(4), pp.227-268. 249

<sup>43</sup> Deci E.L. and Ryan R.M., 2008, ‘Facilitating Optimal Motivation and Psychological wellbeing across life’s domains’, *Canadian Psychology* 2008 vol 49 14 – 23 at 18

<sup>44</sup> Chao R, Tseng V. ‘Parenting of Asians’ in: Bornstein M.H., ed. *Handbook of parenting. Vol. 4: Social conditions and applied parenting*. 2<sup>nd</sup> ed, Mahwah, NJ: Erlbaum; 2002. pp. 59–93.

<sup>45</sup> Hyungshim Jang et al, ‘Can Self-Determination Theory Explain What Underlies the Productive, Satisfying Learning Experiences of Collectivistically Oriented Korean Students?’ (2009) 101(3) *Journal of Educational Psychology* 644, 645. 5

beliefs, values and interests.<sup>46</sup> The need for autonomy requires ‘autonomy-supportive’ learning conditions at law school.<sup>47</sup> Competence is what we all seek to develop in our students. Students need to feel capable of mastering the tasks and challenges that face them. We can support the development of student competence by providing well-structured affirming learning environments and avoiding environments that are ‘chaotic and demeaning’.<sup>48</sup> Relatedness requires meaningful and reciprocal connection with significant other people. To support it we need to provide students with environments that are “warm and responsive” rather than ‘cold and neglectful’.<sup>49</sup>

SDT provides us with guidance as to how to design our curricula, so that the learning and assessment experiences we provide for our students encourage them to relate to us and to each other. As noted above, Sheldon and Krieger are leading authorities in terms of understanding the mental health impacts of law school through the SDT lens. They have said:

According to SDT, all human beings require regular experiences of autonomy, competence, and relatedness to thrive and maximize their positive motivation. In other words, people need to feel that they are good at what they do or at least can become good at it (competence); that they are doing what they choose and want to be doing, that is, what they enjoy or at least believe in (autonomy); and that they are relating meaningfully to others in the process, that is, connecting with the selves of other people (relatedness).

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<sup>46</sup> Christopher P Niemiec, Richard M Ryan and Edward L Deci, ‘Self-Determination Theory and the Relation of Autonomy to Self-Regulatory Processes and Personality Development’ in Rick Hoyle (ed), *Handbook of Personality and Self-Regulation* (Wiley-Blackwell, 2010) 169, 176.

<sup>47</sup> Maarten Vansteenkiste, Christopher P Niemiec and Bart Soenens, ‘The Development of the Five Mini-Theories of Self Determination Theory: An Historical Overview, Emerging Trends and Future Directions’ in Timothy C Urdan and Stuart A Karabenick (eds), *The Decade Ahead: Theoretical Perspectives on Motivation and Achievement* (Emerald Group Publishing 2010) 131–2.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*

This section draws on and is developed in Caroline Strevens, Rachael Field and Nigel Duncan, ‘Self-Care as a Professional Virtue for Lawyers’ in Strevens and Field (n 8) 14-26 at 16-18.

These needs are considered so fundamental that Ryan<sup>50</sup> has likened them to a plant's need for sunlight, soil, and water.<sup>51</sup>

Thus, in order to assist our students to thrive we should be providing them with an environment that develops their competence at the tasks and challenges we set them, gives them a degree of autonomy in the choice of work and activities they undertake and encourages a supportive relatedness in their interactions with us and amongst themselves. In order to achieve these things, we might recall the distinction between intrinsic and extrinsic motivation. Krieger and Sheldon provide a helpful explanation.

‘[M]otivation for behavior is distinguished based on the locus of its source, either “internal” (the behavior is inherently interesting and enjoyable, or it is meaningful because it furthers one’s own values) or “external” (behavior is compelled by guilt, fear, or pressure, or choosing to please or impress others).’<sup>52</sup>

A consideration of motivation assists with the identification of factors which may be inimical to student wellbeing, as well as pointing to ways in which we might encourage student wellbeing. In the next section we propose approaches which might contribute to student wellbeing and limit the risk of our causing damage to their mental health through legal education.

### **A law school environment in which students can thrive**

Sheldon and Krieger have developed an integrated model of thriving based upon SDT.<sup>53</sup>

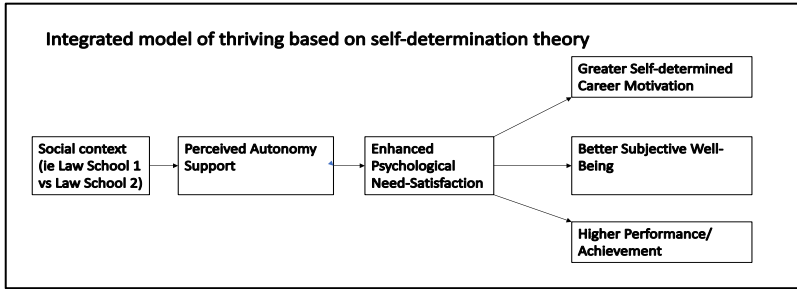
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<sup>50</sup> Richard M Ryan, ‘Psychological Needs and the Facilitation of Integrative Processes’ (1995) 63(3) *Journal of Personality* 397.

<sup>51</sup> Kennon M Sheldon and Lawrence S Krieger, ‘Understanding the Negative Effects of Legal Education on Law Students: A Longitudinal Test of Self-Determination Theory’ (2007) 33(6) *Personality and Social Psychology Bulletin* 883, 885.

<sup>52</sup> Lawrence S Krieger and Kennon M Sheldon, ‘What Makes Lawyers Happy? Transcending the Anecdotes with Data from 6200 Lawyers’ (2015) 83 *George Washington Law Review* 554, 565.

<sup>53</sup> Sheldon and Krieger (n 51) 884.



Our position, as stated above, is that law academics (and law school leadership) have an ethical responsibility to do what is possible to provide law students with an environment and learning experiences that promote thriving and avoid circumstances that are inimical to thriving.<sup>54</sup> In this section we propose some measures which may assist in this endeavour. The scope of this article, does not allow us to do justice to each area identified. However, references are provided for those who wish to explore each issue further. Nor do we assert that this is an exhaustive list of potential appropriate approaches. Indeed, we hope that this article may promote a discussion between colleagues from all European and other jurisdictions as to how the proposals suggested here might be further developed, added to and extended.

### *Marketing and recruitment*

We focus elsewhere on the motivation of students. In this section we address the motivation of the institutions that provide legal education. One function of the growing neoliberal influence on our universities is increased competition for students. In most higher education systems each extra student brings in marginal funding. This has led to a growth of marketing activities by universities<sup>55</sup> which seek to present distinctive characteristics and positive images. ‘There are, of course, many images of smiling students, sunny rooms, students walking around campuses, and students enjoying the nightlife. There are also images of students mooting, gowned and, in some cases, bewigged but few of students studying.’<sup>56</sup> On the basis of the evidence cited above, this is not representative, however, of the majority of student learning in law school. Hannah Fearn quotes a sixth-former saying: ‘I struggled to find student

<sup>54</sup> Duncan, Field and Strevens (n 14).

<sup>55</sup> For an analysis of law school websites in the UK see Graeme Broadbent and Pamela Sellman, ‘Great Expectations: Law Schools, Websites and the “Student Experience”’ (2013) 47(1) *The Law Teacher* 44.

<sup>56</sup> *Ibid* 61.



comments [about law school], and if I did they were always good and never bad ones',<sup>57</sup> and a teacher observing, 'Maybe students talking about problems they had and how the university supported them would also be helpful'.<sup>58</sup> It may be unrealistic to ask marketing departments to present anything other than these rosy pictures, but the consequence is that students acquire an unrealistic impression of what their experience of learning law at university will be.<sup>59</sup>

A further consequence of the desire to increase the number of students is possibly a tendency to accept students with lower grades than might be preferred. This is a sensitive issue, as the perfectly legitimate desire to widen participation in university education may lead to a similar willingness to accept students who have not achieved standard admissions criteria.

If the goal is merely attracting as many students as possible to maximise income, there is a serious risk of setting individuals up for failure. Admitting students with a widening participation motive is entirely different, as the goal is not to receive the income that comes with their entry but to assist them to achieve their goals of benefitting from a higher education and achieving graduation.

We need to recall that 'social mobility projects inevitably generate tensions and identity dissonance'.<sup>60</sup> In our attempts to help students to learn from this dissonance, SDT reminds us that competence and autonomy are significant factors in ensuring that people thrive in their activities. Foundation programmes are designed to assist students to achieve the necessary competence to embark with confidence on higher legal education. What is more, the experience of well-designed programmes provides students with information and insight that enable them to exercise a more informed choice, thus enhancing their autonomy whether they decide to embark on a law career

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<sup>57</sup> Hannah Fearn, 'Deciphering the Code' *Times Higher Education* (19 August 2010) 31-34, 31, quoted in Broadbent and Sellman (n 59) 59.

<sup>58</sup> *Ibid*, 34.

<sup>59</sup> Caroline Strevens, 'The Wrong Message for Law Student Well-Being' in Emma Jones and Fiona Cownie (eds), *Key Directions in Legal Education: National and International Perspectives* (Routledge 2020).

<sup>60</sup> Hilary Sommerlad, (2007) 'Researching and Theorizing the Processes of Professional Identity Formation' (2007) 34(2) *Journal of Law and Society* 190, 201. This article provides deep insights into the experience of non-traditional students seeking to enter the legal profession.

or go in a different direction. Therefore, these programmes and other measures of assistance to facilitate and enable such students to succeed are clearly justified and appropriate.<sup>61</sup> Such measures are, however, costly to provide and represent an example of the way in which neoliberal tendencies challenge desirable approaches in current higher education. We should be continuing to encourage diversity in our student intake, and ensuring that the students we recruit are well-prepared for the demands of study. Such an approach involves honest marketing and the provision of appropriate Foundation and Access programmes where necessary.

### *Curriculum design*

Design of the curriculum lies at the core of most students' experience of learning. Recently significant attention has been drawn to ways in which curriculum design can contribute to student mental wellbeing. Advance HE (formerly the HE Academy) provides a useful resource<sup>62</sup> which includes ways of infusing awareness of mental wellbeing into the curriculum. This approach, adopted from work done in the USA,<sup>63</sup> 'aims to use the discipline to develop students' understanding of mental wellbeing and related issues. Where it draws on students' own lived experience, it can help to convey that academic staff value their students not only in their capacity as learners but holistically. This message may be particularly helpful in a large group, where getting to know each student individually may be difficult.'<sup>64</sup> The Advance HE report provides examples of how this can be achieved, although none come from law. It then suggests a variety of ways of promoting mental wellbeing through the curriculum,<sup>65</sup> and provides reflective tools for individuals and institutions to consider how to achieve improvements within their own departmental, disciplinary and institutional contexts.<sup>66</sup>

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<sup>61</sup> Lyn Tett, 'Widening Provision in Higher Education – Some Non-Traditional Participants' Experiences' (2006) 14(1) *Research Papers in Education* 107.

<sup>62</sup> Ann-Marie Houghton and Jill Anderson, *Embedding Wellbeing in Higher Education* (HE Academy 2017) <[https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/hea/private/hub/download/embedding\\_wellbeing\\_in\\_he\\_1568037359.pdf](https://s3.eu-west-2.amazonaws.com/assets.creode.advancehe-document-manager/documents/hea/private/hub/download/embedding_wellbeing_in_he_1568037359.pdf)> accessed 16 February 2020.

<sup>63</sup> Todd A Olson and Joan B Riley, 'Weaving the Campus Safety Net by Integrating Student Health Issues into the Curriculum' (2009) 14(2) *About Campus* 27.

<sup>64</sup> Houghton and Anderson (n 62) 18.

<sup>65</sup> *Ibid* 20-25.

<sup>66</sup> *Ibid* 26-29.

One important element of curriculum design for wellbeing is to ensure that it is genuinely progressive over the period of study. A scaffolded curriculum responds to students' growing competence at analysis and critique, thus reducing unnecessary stress and maximising the potential for learning. The introduction of optional modules in later stages of the degree provides greater scope for students to experience autonomy. These are characteristics of most law degree programmes.. However, this progression in subject-matter is rarely matched by a progression in learning experience. The words of Mary Keyes and Richard Johnstone writing in 2004 about Australian legal education, still have some relevance today:

Students are taught the same type of material – a detailed analysis of common law rules – and are given the same kind of assessment – examinations testing mastery of the legal rules and their application to hypothetical problems – semester after semester, in much the same way ... The only thing that changes between subjects and between semesters in the student's progression through the degree is the substantive rules which forms the content of the subjects.<sup>67</sup>

In civil law systems, the analysis of common law rules is replaced by an exegesis of Codes, but we suggest that the critique above remains true to a significant degree. Johnstone offers a further criticism of this traditional model: 'Repetitive, incoherent between years and without planned incremental development, and narrowly focused on doctrine rather than skills, theory, values or attitudes ...'.<sup>68</sup> In the UK, there have been developments, with a revised Benchmark Statement in Law from the Quality Assurance Agency that introduces a number of skills and values that should be addressed in the law degree.<sup>69</sup> The explanatory note to the 2015 edition says:

[A] law graduate is far more than a sum of their knowledge and understanding, and is a well skilled graduate with considerable transferable generic and subject-specific

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<sup>67</sup> Mary Keyes and Richard Johnstone, 'Changing Legal Education: Rhetoric, Reality and Prospects for the Future' (2004) 26(4) *Sydney Law Review* 537, 541.

<sup>68</sup> Richard Johnstone, 'Whole-of-Curriculum Design in Law' in Sally Kift, Michelle Sanson, Jill Cowley and Penelope Watson, (eds), *Excellence and Innovation in Legal Education* (Lexis Nexis 2011) 2, 3.

<sup>69</sup> Quality Assurance Agency, *Subject Benchmark Statement: Law* (2019) <[https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881\\_16](https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/subject-benchmark-statement-law.pdf?sfvrsn=b939c881_16)> accessed 29 August 2019.

knowledge, skills and attributes. This is why the benchmark outcomes are titled 'A law student's skills and qualities of mind' and not, simply, 'Subject knowledge and understanding'. By qualities of mind, we mean the intellectual abilities and attributes of graduates in law, including but not limited to legal knowledge and understanding. Accordingly, we have kept references to knowledge and understanding from previous law Subject Benchmark Statements, but we have added references to self-management and academic integrity.<sup>70</sup>

This is a valuable extension in understanding and UK universities are developing their programmes accordingly. We are not aware of any research that explores whether similar developments are taking place in other European jurisdictions, but if this were the case it would be worth sharing that experience, and this journal may well be a suitable forum for such an exchange.

Achieving these goals in the design of a law degree is not easy. Individual module leaders are understandably concerned to maintain their academic freedom (or autonomy) to teach their subject in a way which they regard as most appropriate and may be unwilling to introduce specific wellbeing-focussed skills or values (or indeed learning methods) into their teaching. Indeed, the Benchmark Statement is clear that they do not wish to be prescriptive and wish to encourage diverse approaches. We endorse this, but also recognise that it may be difficult to ensure a progressive approach to the development of skills and the exposure to values without a degree of overall curriculum design.<sup>71</sup>

What is required is an application to the study of law of the principles underlying the concept of a spiral curriculum. This notion, developed by Jerome Bruner,<sup>72</sup> has three key features:

- The students revisit a topic, theme or subject several times throughout their ... career;
- The complexity of the topic or theme increases with each revisit.

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<sup>70</sup> Quality Assurance Agency, *Subject Benchmark Statement: Law* (2015) 4.

<sup>71</sup> Sally Kift, 'Lawyering Skills: Finding Their Place in Legal Education' (1997) 8 *Legal Education Review* 43.

<sup>72</sup> Jerome Bruner, *The Process of Education* (Harvard College, 1960).

- New learning has a relationship with old learning and is put in context with the old information.<sup>73</sup>

Thus, curricula should be designed with a view to reiterations over time and in different contexts. This has been approached through the concept of a vertical curriculum, particularly in the context of medical education.<sup>74</sup> Davis and Harden found that planning learning throughout the curriculum needed to be made explicit to staff and students, which was assisted by curriculum mapping.<sup>75</sup> This approach has been adopted in the context of law degrees in Australia, seeking to achieve a number of objectives:

A good law curriculum also needs to be congruent, integrating the teaching of skills, doctrine, theory and ethics and values, and coordinating the curriculum so that students can develop their knowledge, skills and values progressively or incrementally. In other words, the relationship *between subjects* in the curriculum needs to be congruent – both across the curriculum and through the curriculum.<sup>76</sup>

Success in such endeavours requires attention to ensuring that a specific issue has a home in each year of the degree and is built upon the learning of the subsequent year. Keyes and Johnstone demonstrate one example of this at the University of Technology, Sydney.<sup>77</sup> Michael Robertson explains the experience of developing ‘vertical subjects’ at Griffith University as follows:

The vertical subject is a continuing one that would progress *throughout* the programme in a carefully structured way. It would intersect with and reside within various courses in each semester or year of the programme. The levels of understanding contained in ethics learning objectives would increase in complexity from one host subject to the next. Points of co-existence with other subject areas would be determined by the extent to which practice in those

<sup>73</sup> Howard Johnstone, *The Spiral Curriculum* (Education Partnerships Inc. 2012).

<sup>74</sup> See, Margery Davis and Ronald Harden, (2003) ‘Planning and implementing an undergraduate medical curriculum: the lessons learned’ (2003) 25(6) *Medical Teacher*, 596, and for a critical view, L O Dahle et al, ‘Pros and Cons of Vertical Integration Between Clinical Medicine and Basic Science within a Problem-Based Undergraduate Medical Curriculum: Examples and Experiences from Linköping, Sweden’ (2002) 24(3) *Medical Teacher* 280.

<sup>75</sup> Davis & Harden (n 74) 602.

<sup>76</sup> Richard Johnstone (n 68) 14.

<sup>77</sup> Keyes & Johnstone (n 67) 17.

substantive areas unavoidably implicated enquiries about both the role of the lawyer and ethical decision-making in particular. Moreover, in each site in which the vertical subject co-existed with the traditional subject area, ethics learning objectives, teaching and assessment within the host subject would need to be carefully aligned.<sup>78</sup>

Robertson is writing in the context of integrating legal ethics throughout the degree, but the principle could equally well be applied to ensuring that students develop a reflective practice towards their study, to their intellectual and moral development and to their continuing mental wellbeing. Activities should be embedded in a planned and intentional way into the curriculum so as to help students develop greater awareness of their own development, thus experiencing an opportunity to take greater responsibility for it. Thus, reflection on their own development is key to the success of this approach.

It may be that an all of curriculum design is unlikely to find favour in some law schools. This does not mean that the value of reflection on one's own development may not be introduced in other ways. Appropriately-designed modules that introduce a reflective element are managerially easier to introduce and can provide the basis, if introduced early in the curriculum, for an approach that will assist students' reflective learning throughout. Field and Duffy present the introduction of a 'Lawyering and Dispute Resolution' module which helps students to understand the nature of legal analysis and practice from a critical perspective, but, significantly, within a 'framework of hope' that allows reflection on their development and wellbeing as well as on the subject-matter of their study.<sup>79</sup> Their goal was student wellbeing but student responses suggest that the subject focus on dispute resolution informed students' study of other modules as well. This, we argue, has the capacity to contribute to their development of both competence and autonomy.

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<sup>78</sup> Michael Robertson, 'Challenges in the Design of Legal Ethics Learning Systems: An Educational Perspective' (2005) 8 (2) *Legal Ethics* 222, 238.

<sup>79</sup> Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting student Wellbeing through a First Year Law Subject' (2012) 12 *Queensland University of Technology Law and Justice Journal* 133. See also, Rachael Field, James Duffy and Anna Huggins, *Lawyering and Positive Professional Identities* (2<sup>nd</sup> ed LexisNexis 2020) Chapter 4, and Nickolas James, Rachael Field and Jackson Walkden-Brown, *The New Lawyer* (2<sup>nd</sup> ed Wiley 2019) Chapter 10.

*Assessment and Feedback*

Another area where developments are taking place is in applying learning to how we assess our students. It is not within the scope of this article to look fully at this, but we introduce the topic briefly.<sup>80</sup>

Assessment is a major source of stress for our students.<sup>81</sup> The introduction of new learning outcomes such as skills and values has led to a tendency to undertake more, and more diverse assessments. We have recognised that conventional closed-book unseen examinations fail to meet many of the goals of effective assessment, with the result that we have introduced coursework,<sup>82</sup> and a variety of alternative assessments.<sup>83</sup> New approaches to assessment in law school have significantly improved the ability of law academics to assess the intellectual development of students with less reliance on memory and to assess other skills. Such approaches do not, as has been suggested, favour women over men, although they appear to enable all students, regardless of gender to achieve higher marks.<sup>84</sup> This may contribute to perceptions of 'grade inflation' as an unintended consequence of improvements to assessment methods in higher education.

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<sup>80</sup> See, for example, Cordelia Bryan and Karen Clegg (eds), *Innovative Assessment in Higher Education: A Handbook for Academic Practitioners* (2<sup>nd</sup> ed, Routledge, 2019); Maria A Flores et al, 'Perceptions of Effectiveness, Fairness and Feedback of Assessment Methods: A Study in Higher Education' (2015) 40(9) *Studies in Higher Education* 1523; Kay Sambell, 'Assessment and Feedback in Higher Education: Considerable Room for Improvement?' (2016) 1(1) *Student Engagement in Higher Education* <<https://sehej.raise-network.com/raise/article/view/392>> accessed 13 December 2019; David Boud and Nancy Falchikov (eds), *Rethinking Assessment in Higher Education: Learning for the Longer Term* (Routledge, 2007).

<sup>81</sup> See, for example, Brian M Hughes, 'Study, Examinations and Stress: Blood Pressure Assessments in College Students' (2005) 57(1) *Educational Review* 21; Honor Nicholl and Fiona Timmins, 'Programme-Related Stressors Among Part-Time Undergraduate Nursing Students' (2005) 50(1) *Journal of Advanced Nursing* 93.

<sup>82</sup> John T Richardson, 'Coursework Versus Examinations in End-of-Module Assessment: A Literature Review' (2015) 40 *Assessment and Evaluation in Higher Education* 439.

<sup>83</sup> Sally Brown and Angela Glasner (eds), *Assessment Matters in higher Education: Choosing and Using Diverse Approaches* (SRHE and Open University Press, 1999).

<sup>84</sup> Ruth Woodfield, Sarah Earl-Lovell and Lucy Solomon, 'Gender and Mode of Assessment at University: Should we Assume Female Students are Better Suited to Coursework and Males to Unseen Examinations?' (2005) 30(1) *Assessment and Evaluation in Higher Education* 35.

Provision of greater diversity in assessment methods often leads to a larger number of assessments, even to regimes of ‘continuous assessment’.<sup>85</sup> This approach risks adding to student stress by the sheer number of assessment events that students are required to surmount. It is key that such approaches are designed (and perceived) to be ‘assessment for learning’, rather than simply ‘assessment of learning’. Assessment for learning requires effective feedback on the assessed work, so that its prime function is formative (whether or not it is also summative). Indeed, there is evidence that students who receive both a grade and feedback for their work tend to note the grade and ignore the feedback,<sup>86</sup> which may suggest that most assessment should be formative only. There is a copious literature on feedback.<sup>87</sup> In this context we shall address one issue that may often be ignored: the emotional impact on students of receiving feedback on their work.

As we have already noted, students come to their university degree from different experiences of learning and of life. Many will not have been exposed to detailed constructive feedback on their work. Pitt suggests:

To attempt to change student’s perceptions of and induct them into a new learning environment, we should enable them to experience:

- opportunities to reflect upon their previous assessment and feedback experiences from an emotional standpoint;
- opportunities to explore how their emotions underpin their approach to learning, assessment and feedback behaviours;
- situations in which we acknowledge their prior feelings by initiating dialogue right at the outset of their HE experience;
- a learning environment that is supported by an appreciation of the role that emotions play in their learning in order to mitigate misunderstanding;

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<sup>85</sup> Rosario Hernandez, ‘Does Continuous Assessment in Higher Education Support Student Learning?’ (2012) 64 (4) *Higher Education* 489.

<sup>86</sup> Pam Parker and Patrick Baughan, ‘Providing Written Assessment Feedback that Students will Value and Read’ (2009) 16 *The International Journal of Learning* 5.

<sup>87</sup> A good starting point is David Nicol and Debra Macfarlane-Dick, ‘Formative Assessment and Self-Regulated Learning: A Model and Seven Principles of Good Feedback Practice’ (2006) 31(2) *Studies in Higher Education* 199. More generally, see David Boud and Elizabeth Molloy, *Feedback in Higher and Professional Education: Understanding It and Doing It Well* (Routledge 2013).



- our commitment to develop their emotional literacy over time, in order to improve their subsequent feedback usage and assessment performance.<sup>88</sup>

Thus, by helping students to become self-aware of their emotional responses to the challenges that university presents them, they may develop greater resilience and come to use our feedback more effectively. Paula Manning has written eloquently about the why and the how of supporting students' sense of competency through the provision of information and choice in feedback.<sup>89</sup>

We should also ensure effective constructive alignment between what we expect our students to learn, how we expect them to learn it and how we assess them on it. In other words, we should design assessments that enable students to demonstrate what they have been learning, using, as far as possible, the activities that they have been developing in their learning programmes. Thus, if they have been learning through reading, discussion and discursive writing this should, as far as possible, inform the nature of the assessments that are set. To be set a different type of assessment (multiple-choice examinations come to mind) must feel like being tricked.

### *Experiential Learning*

One approach to addressing the challenge issued by Mary Keyes and Richard Johnstone more than 15 years ago that also addresses the requirements of a wellbeing-aligned curriculum,<sup>90</sup> is to introduce types of experiential learning to our degree programmes. The essence of all experiential learning approaches is to introduce a reflective element into students' learning. Again, there is a copious literature in this area and it is beyond the scope of this article to explore it.<sup>91</sup> Legal education offers unique opportunities for students to learn

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<sup>88</sup> Edd Pitt, 'Developing Emotional Literacy in Assessment and Feedback' in Cordelia Bryan and Karen Clegg (eds), *Innovative Assessment in Higher Education: A Handbook for Academic Practitioners*, (Routledge 2<sup>nd</sup> ed 2019) 121.

<sup>89</sup> Paula Manning, 'Understanding the Impact of Inadequate Feedback: A Means to Reduce Law Student Psychological Distress, Increase Motivation, and Improve Learning Outcomes' (2012) 43 *Cumberland Law Review* 225.

<sup>90</sup> Keyes and Johnstone (n 67).

<sup>91</sup> David Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Pearson 2<sup>nd</sup> edn, 2014). Donald Schön, *Educating the Reflective Practitioner: Toward a New Design for Teaching and Learning in the Professions* (Jossey-Bass, 1987).

experientially through the developments introduced by clinical method.<sup>92</sup> Initially developed in common law jurisdictions, clinical legal education has spread internationally,<sup>93</sup> and is increasingly widely used across Europe.<sup>94</sup> Although definitions of clinic vary, most would recognise three main strands. First, simulation, which can take place within the classroom setting or virtually, where students learn by undertaking realistic work; second, in-house clinics, where students, under supervision and often working in pairs or teams, take on real cases for clients; and third, externships, where students undertake placements in an office providing legal services outside the university.

The most effective programmes recognise a progressive approach to introducing clinical experience and this is one we would recommend. Students start with simulations which enable them to develop their insights and their skills in a safe environment where mistakes can lead to learning without causing damage to vulnerable clients. Traditionally simulations were developed in the classroom context,<sup>95</sup> but virtual environments have vastly expanded the scope for simulated clinical learning.<sup>96</sup> Indeed, free software is now available that enables universities to offer their students experience in virtual environments where they role-play realistic legal transactions.<sup>97</sup> An essential element to an effective simulation process is engaging students in a reflective approach to their work.<sup>98</sup> Reflection is key to ensuring deep learning

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<sup>92</sup> Hugh Brayne, Nigel Duncan and Richard Grimes, *Clinical Legal Education, Active Learning in your Law School* (Blackstone 1998); Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association 2007); Linden Thomas et al (eds), *Reimagining Clinical Legal Education* (Hart 2018).

<sup>93</sup> Frank Bloch (ed), *The Global Clinical Movement: Educating Lawyers for Social Justice*, (Oxford University Press 2011).

<sup>94</sup> Maxim Tomoszek, 'Reflections on New Trends in Clinical Legal Education in Continental Europe', in Thomas et al (n 92).

See also, for example, the programme of the European Network for Clinical Legal Education Conference held at Comenius University, Bratislava in July 2019: <<https://www.northumbria.ac.uk/about-us/news-events/events/2019/07/ijcle-2019/>> accessed 13 December 2019.

<sup>95</sup> Brayne, Duncan and Grimes (n 92) ch 5 and 220-229.

<sup>96</sup> Abdul Paliwala, 'Leila's Working Day: One of the Futures of Legal Education' (2000) 34(1) *The Law Teacher* 1; Paul Maharg, *Transforming Legal Education* (Routledge 2007) 283-292; Caroline Strevens, Richard Grimes and Edward Phillips (eds), *Legal Education: Simulation in Theory and Practice* (Ashgate 2014).

<sup>97</sup> Karen Barton, Patricia McKellar and Paul Maharg, 'Authentic Fictions: Simulation, Professionalism and Legal Learning' (2007-8) 14 *Clinical Law Review* 143; <<https://simplecommunity.org/>> accessed 13/12/2019.

<sup>98</sup> David Boud, Rosemary Keogh and David Walker (eds), *Reflection: Turning Experience into Learning* (Kogan Page 1985); Scott G Isaksen and Donald J Treffinger, 'Celebrating 50 years of Reflective Practice: Versions of Creative Problem Solving' (2004) 38(2) *The*

of the substantive law they are applying to the problems they encounter. It is also key to ensuring that their experience develops their intellectual and transferable skills to the greatest possible extent. Webb provides a theoretical basis for this approach and gives an example and practical guidance as to how it might be incorporated into an undergraduate law degree.<sup>99</sup> This approach has now become widespread in UK law schools, at least as an elective option available for interested students.

If students have undergone a series of simulated experiences in which they have had an opportunity to develop (and reflect upon) their skills, they should have developed a greater degree of competence as legal analysts.<sup>100</sup> From an academic point of view this will deepen their understanding of the law as it works for the people who are subject to it and thus develop their critical capacity. It will also contribute to their basic psychological needs<sup>101</sup> and thus, according to SDT, help them to thrive.

Where law schools have developed their clinical programmes to include experience with real clients, students may develop further from their involvement in simulations. According to Sullivan *et al.*, '[i]n high-quality legal clinics, expert performance is modelled by supervising faculty, students enact a wide range of skills, and faculty coach them toward improved performance

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*Journal of Creative Behavior* 75; Russell Rogers, 'Reflection in Higher Education: A Concept Analysis' (2001) 26(1) *Innovative Higher Education* 37; Filippa M Anzalone, 'Education for the Law: Reflective Education for the Law' in Nona Lyons (ed), *Handbook of Reflection and Reflective Enquiry: Mapping Ways of Knowing for Professional Reflective Enquiry* (Springer Science + Business Media 2010) 85; Mary Ryan, 'The Pedagogical Balancing Act: Teaching Reflection in Higher Education' (2013) 18(2) *Teaching in Higher Education* 144; Michele Leering, 'Conceptualizing Reflective Practice for Legal Professionals' (2014) 23(5) *Journal of Law and Social Policy* 83; Michele Leering, 'Integrated Reflective Practice: A Critical Imperative for Enhancing Legal Education and Professionalism' (2017) 95(1) *Canadian Bar Review* 47; Jodi S Balsam, Susan L Brooks and Margaret Reuter, 'Assessing Law Students as Reflective Practitioners' (2017) 62 *New York Law School Law Review* 49; Jenny Gibbons, 'Reflection, Realignment and Refraction: Bernstein's Evaluative Rules and the Summative Assessment of Reflective Practice in a Problem-Based Learning Programme' (2018) *Teaching in Higher Education* 1.

<sup>99</sup> Julian Webb, 'Where the Action is: Developing Artistry in Legal Education' (1995) 2(2-3) *International Journal of the Legal Profession* 187.

<sup>100</sup> Richard M Ryan and Edward L Deci, 'Self-Determination Theory and the Facilitation of Intrinsic Motivation, Social Development, and Well-Being.' (2000) 55(1) *American Psychologist* 68.

<sup>101</sup> See text at n 41-2.

through continuous feedback.<sup>102</sup> Sullivan *et al* were responding in 2007 to widespread critiques of US law schools as contributing to a malaise in the legal profession. They quote a third-year student saying, 'The model we are taught is intensely dehumanizing. You are taught to think of opinions without the people in them. That tells you a lot about the type of lawyers the school creates. The advantage of the clinic is that you interact with real people.'<sup>103</sup> A professor adds: 'Clinics try to re-sensitize students after being de-sensitized in law school' and, as another student says, '[i]t reinforces my sense that I can serve people who really need my help. It saves my sanity when I want to drop out.'<sup>104</sup>

This is significant for the other basic psychological needs: relatedness and autonomy. Students engaged in clinical programmes will typically work in pairs or small groups. They will encounter clients, mostly from low-income backgrounds, whose life experience may be very different from their own. This engages them in collaborative work of very different kinds. They are short-term collaborations which are typical of much of a lawyer's work. They include work with colleagues to prepare advice for a client, but also the very different work with their clients, including some who may be heavily reliant on them, but also others who may make significant demands from a position of considerable knowledge.<sup>105</sup> In doing so they are 'relating meaningfully to others in the process, that is, connecting with the selves of other people'.<sup>106</sup>

Legal academics working in clinical contexts can assist students to develop competence in connecting with other people through the provision of simulated experiences of working in teams and of interviewing clients, but also by introducing students to theories of empathy, so as to help them to understand how to develop their professionalism through demonstrating empathy to their clients. As Wispé explains: 'Sympathy refers to the heightened awareness of another's plight as something to be alleviated. Empathy refers to the attempt of one self-aware self to understand the subjective experiences of another self.

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<sup>102</sup> William Sullivan *et al*, *Educating Lawyers: Preparation for the Profession of Law* (Jossey-Bass 2007) 145.

<sup>103</sup> *Ibid* 159.

<sup>104</sup> *Ibid*.

<sup>105</sup> City Law School's Clinical Legal Education LLM, for example, offers students widely varying experience ranging from representing appellants against decisions to remove their disability benefits to company directors appearing in the Winding Up Court.

<sup>106</sup> Sheldon and Krieger (n 51).

Sympathy is a way of relating. Empathy is a way of knowing.’<sup>107</sup> We believe that developing such ways of knowing can then, through reflection, impact positively on students’ work and their developing capabilities, addressing their basic needs of relationality and competence and thus supporting student wellbeing.

How does this relate to the third basic psychological need of autonomy? All the clinical opportunities available to students share one characteristic: they meet the needs of individuals who find themselves requiring legal services but are unable to afford the market for legal services for which these pro bono services provide the only alternative. Students may, however, work with disabled persons or company directors, the victims of domestic violence, of discrimination at work or unfair dismissal, people who are homeless or who seek to appeal against a criminal conviction. Thus, there is a degree of autonomy involved in the intrinsically motivated choice of students to volunteer for clinical work, or to undertake assessed clinical modules and enact their values: through that autonomous choice to become involved with such work ‘they are doing what they choose and want to be doing, that is, what they enjoy or at least believe in’.<sup>108</sup>

#### *A safe learning environment*

If it is desirable for students to develop their legal skills in the relatively safe environment of simulations before turning to work with real clients, we need to recognise our responsibility for ensuring that their learning environment feels as safe as possible for them. This applies as much to the conventional classroom as simulated clinical legal education contexts. In this section we suggest a few approaches that may reduce inappropriate stress on students and thus encourage constructive learning.

The first point is perhaps an obvious one: that we should avoid behaviour on our own part that might add unnecessary stress to students. One of us recalls an early experience in their first job in higher education.

I was due to take tutorials following lectures to be given by the module leader. I attended the first lecture and the lecturer asked a question and directed it to

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<sup>107</sup> Lauren Wispé, ‘The Distinction between Sympathy and Empathy: To Call Forth a Concept, a Word is Needed’ (1986) 50(2) *Journal of Personality and Social Psychology* 314.

<sup>108</sup> Sheldon and Krieger (n 51).

one student. The student's answer was incorrect (but not ridiculous). The lecturer said nothing but his lip curled in disdain and he moved on. I was appalled, but felt too inexperienced to challenge the lecturer. If I felt intimidated, I can only imagine what the impact on the student in question was.

If it had had any motivating effect (which we imagine the lecturer thought) it was an extrinsic motivation and, according to Deci and Ryan, probably damaging to intrinsic motivation and thriving.<sup>109</sup> We can do better. Students need to be actively engaged in our classes, but when they get things wrong we need to give feedback to explain what is wrong, to give credit, where possible, for anything that was valid and always to give encouragement as to how they might improve. We should be able to model the mutual respect that is a hallmark of any empathic relationship.

One consequence of widening participation initiatives is that our student body is less homogeneous than it once was. Students who are the first in their family to enter higher education are unlikely to have received private schooling which can provide those whose parents could afford it with a veneer that gives an impression of intellectual development that may or may not be justified. These students may find themselves in groups with others whose educational experience gives them far greater confidence in speaking and responding. Others, particularly from low income or minority ethnic communities may have equal intellectual ability but find themselves uncomfortable in a university environment or be less able to express themselves with confidence.<sup>110</sup> There is a risk that these 'widening participation' students will be perceived as lacking in some way. This perspective should be resisted. Insight into a deeper perspective comes from Yosso's analysis,<sup>111</sup> developing and critiquing Bourdieu's concept of cultural capital.<sup>112</sup> Yosso points out how Bourdieu's approach starts from that of the white middle class and thus risks perceiving the cultural capital of other groups as somehow inferior.<sup>113</sup> She identifies

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<sup>109</sup> Deci and Ryan (n 40).

<sup>110</sup> See Hilary Sommerlad (n 60) for insight into the experience of students from such backgrounds.

<sup>111</sup> Tara Yosso, 'Whose culture has capital? A critical Race Theory Discussion of Community Cultural Wealth' (2005) 8(1) *Race Ethnicity and Education* 69.

<sup>112</sup> Pierre Bourdieu, 'The forms of capital' in John G Richardson (ed), *Handbook of Theory and Research for the Sociology of Education* (Greenwood Press 1986) 241.

<sup>113</sup> Yosso (n 111) 76.

several different types of capital on which students from different cultures and background may draw. Amongst these are:

- ‘aspirational capital’: ‘the ability to maintain hopes and dreams for the future, even in the face of real and perceived barriers’;<sup>114</sup>
- ‘familial capital’: ‘cultural knowledges nurtured among ... kin that carry a sense of community history, memory and cultural intuition’;<sup>115</sup>
- ‘social capital’: ‘networks of people and community resources’;<sup>116</sup>
- ‘resistant capital’: ‘knowledges and skills fostered though oppositional behaviour that changes inequality’.<sup>117</sup>

Recognising the potential of these strengths has informed research into the experience of ‘first in family’ students.<sup>118</sup> O’Shea recommends that our focus should be ‘less on working upon the students to change or alter them in order to engender a “sense of fit” with the institution. Rather, we need to rethink how we consider the notion of integration within higher education organisations.’<sup>119</sup> We should ‘reposition understanding of this group not as students “without” but rather as individuals “with”’.<sup>120</sup> Unfortunately, the neoliberal tendencies within the academy discussed above may be inimical to achieving this shift in perspective, as ‘far from “opening out” law to increased diversity ... there may in fact be reason to see these developments as potentially reinforcing ideas of law as a relatively closed professional practice.’<sup>121</sup>

In order to facilitate the most effective learning environment it is necessary for us to be aware of students’ different approaches to learning. A major distinction has been drawn between Confucian learning culture and Socratic learning culture.<sup>122</sup> Tweed and Lehman identify the former as characterised by absorptive learning of essentials; respectful learning; collectivist learning; behavioural reform; pragmatic learning; effortful learning; and affinity for

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<sup>114</sup> *Ibid* 77.

<sup>115</sup> *Ibid* 79.

<sup>116</sup> *Ibid*.

<sup>117</sup> *Ibid* 80.

<sup>118</sup> Sarah O’Shea, ‘Avoiding the Manufacture of “Sameness”: First-in-Family Students, Cultural Capital and the Higher Education Environment’ (2015) *Higher Education* 59, 71-74.

<sup>119</sup> *Ibid* 76.

<sup>120</sup> *Ibid* 75.

<sup>121</sup> Richard Collier (n 17) 224. See the argument developed at 224-6.

<sup>122</sup> David A Watkins D and John B Biggs, *The Chinese Learner: Cultural, Psychological and Contextual Influences* (Centre for Comparative Research in Education & Australian Council for Educational Research, 1992).

poetic ambiguity. The latter is characterised by tendency to question; tendency to evaluate; and esteem for self-generated knowledge.<sup>123</sup> This has led researchers who themselves come from the Western (Socratic) tradition to argue that students from Eastern cultures tend to be passive learners, to replicate what they are told and to engage in surface rather than deep learning.<sup>124</sup> Research into the learning approaches of eastern and western tradition students suggests that this stereotype is, at least, misleading.<sup>125</sup> Students from such a tradition may well also be studying in a second language. Research shows that their learning is often as deep as that of western students but that it takes place in informal discussions with peers in their own language.<sup>126</sup>

The learning in class is only the starting point for deep learning. For students from a Confucian tradition the very experience of volunteering to answer a question is challenging. It is even more difficult to ask a question, risking revealing a failure to understand something they think their colleagues do understand. This can lead to a lack of engagement and an impoverished learning experience. Drawing on the significance of relatedness identified by SDT, we can help with this by encouraging peer learning. As McKeachie *et al* have said:

The best answer to the question, ‘what is the most effective method of teaching?’, is that it depends on the goal, the student, the content and the teacher. But the next best answer is, ‘Students teaching other students.’ There is a wealth of evidence that peer teaching is extremely effective for a wide range of goals, content and students of different levels and personalities.<sup>127</sup>

We still want to encourage active participation in our classes without undue stress. One way to assist with this is the use of audience response technology

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<sup>123</sup> Roger G Tweed and Darrin R Lehman, D R (2002) ‘Learning Considered Within a Cultural Context: Confucian and Socratic Approaches’ (2002) 57(2) *American Psychologist* 89.

<sup>124</sup> Lixian Jin and Martin Cortazzi, ‘Changing Practices in Chinese Cultures of Learning’ (2006) 19(1) *Language, Culture and Curriculum* 5.

<sup>125</sup> John Biggs, ‘Approaches to Learning in Secondary and Tertiary Students in Hong Kong: Some Comparative Studies’ (1991) 6 *Educational Research Journal* 27.

<sup>126</sup> *Ibid* 37.

<sup>127</sup> Wilbert J McKeachie et al, W J, *Teaching and Learning in the College Classroom* (NCRIPAL 1986).



that allows the teacher to put questions to the student group and for them to answer by responding with their mobile devices.<sup>128</sup> This enables anonymous responses without the fear of being seen to fail. It is of great value to the teacher as, with well-designed questions, it becomes possible to see what errors students are making (rather than simply making assumptions about what they do or do not understand). This enables the teacher to direct explanations most appropriately. Recent research into the use of this technology in City Law School shows 65% of students strongly approving, 24% approving, 6% neutral and only 6% expressing any degree of disapproval. When asked about the effect on their learning experience the most popular responses were:

- Exploring right and wrong answers helps my understanding (175);
- I liked being able to vote anonymously (150); and
- They helped create a good class discussion on the topic (134).<sup>129</sup>

In focus groups, one participant said: ‘... it kind of takes the pressure off and you’re actually discussing things and you get used to it, which is conditioning, I think and then you just learn to – to answer it and not feel so anxious about it anymore.’<sup>130</sup> This suggests that these technologies stimulate discussion and enable participation in a way that reduces the stress on students as they engage.

Students need effective sources of support whether academic, emotional or relating to their mental health, if they are to learn successfully at law school and navigate difficult times effectively. If personal tuition can be carried out by teachers who meet them on a regular basis in the course of their studies this may help to maintain contact and address any potential difficulties. However, many academics are not trained (and may be poorly equipped) to provide counselling beyond the academic. For this reason, universities have a duty not

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<sup>128</sup> David Banks (ed), *Audience Response Systems in Higher Education: Applications and Cases* (Information Science Publishing 2006).

<sup>129</sup> Veronica Lachkovic, Snigdha Nag and Dominic Pates, ‘Get Those Phones Out: Using In-Class Polling on a Large Scale Postgraduate Law Course’ Conference poster Learning at City Conference 2019 City, University of London  
<[https://www.city.ac.uk/\\_data/assets/pdf\\_file/0009/475353/Poster-9-Get-Those-Phones-Out-Learning-At-City-Conference-poster.pdf](https://www.city.ac.uk/_data/assets/pdf_file/0009/475353/Poster-9-Get-Those-Phones-Out-Learning-At-City-Conference-poster.pdf)> accessed 13 December 2019.

<sup>130</sup> Snigdha Nag, Veronica Lachkovic and Dominic Pates ‘Connecting students through In Class Polling’ Learning and Teaching Workshop, University of London Centre for Excellence in Learning and Teaching Symposium 2019<<http://bit.ly/UCL-CLS-PE>> accessed 13 December 2019.

only to design curricula and pedagogy with student wellbeing in mind, but also to provide accessible and effective counselling and mental health services.<sup>131</sup>

## **Conclusion**

This article introduces a number of ideas which law academics could consider incorporating into course design, approaches to learning and teaching and the way in which we interact and engage with our students. The treatment of the ideas in this article is necessarily brief. The references provided offer a starting point for further exploration, further research and scholarship and cautious experimentation with the way in which we work with our students. The proposals are, however, chosen with the aim of addressing the insights drawn from self-determination theory and empirical research into the ways in which we can best help our students to thrive. Thus they seek to support student autonomy, competence and relatedness by: reducing unnecessary stress; assisting students to respond effectively to the stress which is inherent in legal education and to prepare for the demands of legal practice. This is a responsibility all legal academics share and the student wellbeing debate is one in which the authors encourage all legal educators to engage in further.

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<sup>131</sup> Emma Broglia, Abigail Millings and Michael Barkham, 'Challenges to Addressing Student Mental Health in Embedded Counselling Services: A Survey of UK Higher and Further Education Institutions' (2017) 46(4) *British Journal of Guidance and Counselling* 441.